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REMARKS

The Applicant thanks the Examiner for examining this application. This is a response to the Office Action mailed on 16 April 2012.

35 U.S.C. §112

Claim 30 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Appropriate correction is made herein.

35 U.S.C. §103(a)

The combined disclosures of Nejime et al. (US Pat. 7,272,843) and Zigmond et al. (US Pat. 6,698,020) form the basis of each grounds of rejection. Nejime basically describes a system that uses markers in broadcast content to find content to insert into the content. Zigmond basically describes a conventional ad server, where ad selection rules are executed inside the network. The two references do not together render the claims obvious, especially in light of the present amendments, which clarify the claimed subject matter and thus bring to better light the significant differences from the cited art *en toto*.

Some reasons why Nejime and Zigmond *en toto* don't obviously suggest the claims are:

1. Nejime is designed so that the broadcast information can include auxiliary content when rendered, but there's no hint that the auxiliary content can be selected based on rules applied at the receiver. IDs for the auxiliary content to insert into the broadcast are hardcoded into the broadcast content, FIG. 3, FIG. 9-10.
2. Zigmond describes the content selection rules applied at the receiver (see rules repository 83). This teaches away from any obvious combination with Nejime, which is designed to use pre-set

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auxiliary content ids encoded into the broadcast information before it ever reaches the receiver. Nothing in the description of Zigmond's receiver-based application of ad selection rules suggests its use with a system like Nejime that uses pre-selected content ids hard-coded into the program before it ever reaches the receiver. Moreover, Zigmond expressly describes the ad selection criteria being separate from the broadcast information, contrary to the claims.

Contrast these two systems, *en toto*, with the claimed system (and method of operating the claimed system). The claimed system (see FIG. 2-5) encodes the ad selection rules directly into the broadcast content. This unusual approach is not obviously reachable by viewing Nejime and Zigmond *en toto*.

Claims 27-28, 30, 32, and 41-46 are rejected under 35 U.S.C. §103(a) as being unpatentable over Nejime et al. (US Pat. 7,272,843) in view of Zigmond et al. (US Pat. 6,698,020), but this rejection should be withdrawn in light of the claim amendments and above remarks.

All of the rejections of the dependent claims use the *en toto* teachings of Nejime and Zigmond at their foundation, and thus inherit the same weaknesses are the rejection of the base claims.

Claim 31 is rejected under 35 U.S.C. §103(a) as being unpatentable over Nejime et al. (US Pat. 7,272,843) in view of Zigmond et al. (US Pat. 6,698,020) as applied to claim 27 above and further in view of Knepper (US PG Pub. 2001/0042249) and Schoff (US Pat. 6,240,555). Knepper, as characterized in the rejection, teaches concurrent delivery of ad information in a separate file from the content. This is clearly contrary to the claims, and cannot be reconciled in any obvious way with the embedded content ids taught in Nejime to reach the claim language. A further weakness of relying on Knepper is that it admittedly sends the ad file concurrently with the content. This is clearly contrary from any suggestion of using a program guide as the "separate file"; first because it unrealistically requires a massive download of the EPG when the file is delivered, which would be viewed as undesirable by those of skill in the art at the time of the invention; second because EPGs are typically provided much in advance of any programming, because they have to comprise information for all broadcast channels, not just the program being viewed. This rendered them not obviously suitable for including ad content, both because of the unrealistic size constraints it would impose on the EPG, and the "staleness" of the ads not provided at or near broadcast time.

Relying on Schoff is also misplaced, because the "supplemental content" has virtually nothing in common with real-time advertising. One skilled in the art would of course consider the

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special properties and requirements of ad content and would require more than a mere description that some other form of unrelated "supplemental content" could be part of an EPG before obviously concluding an EPG could include or identify ad content for insertion into a broadcast.

Claim 33 is rejected under 35 U.S.C. §103(a) as being unpatentable over Nejime et al. (US Pat. 7,272,843) in view of Zigmond et al. (US Pat. 6,698,020) as applied to claim 27 above and further in view of Augenbraun et al. (US PG Pub. 2002/0026642). See remarks supra re claim 27.

Claims 38 and 47 are rejected under 35 U.S.C. §103(a) as being unpatentable over Nejime et al. (US Pat. 7,272,843) in view of Zigmond et al. (US Pat. 6,698,020) as applied to claims 27 and 46, respectively, above and further in view of Eyer et al. (US Pat. 6,588,015). Nejime par 48 is cited but is not part of the reference. Note also Eyer teaches skipping over commercials, not suppressing their insertion into the stream itself.

Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nejime et al. (US Pat. 7,272,843) in view of Zigmond et al. (US Pat. 6,698,020) as applied to claim 41 above and further in view of Harville (US Pat. 6,993,245). See remarks for claim 41 supra.

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Reservation of Rights

The Applicant believes every assertion by the Office Action has been addressed, however in the interest of clarity and brevity, applicant may not have asserted every available argument for each assertion made in the Office Action. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. §1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record is relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP §2144.03. Applicant reserves all rights to pursue any canceled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP §821.04.

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Conclusion

The Applicant respectfully requests that a Notice of Allowance be issued covering the pending claims. If the Examiner believes that a telephone interview would in any way advance prosecution of the present application, please contact the undersigned.

Please charge any additional fees under 37 CFR §§ 1.16, 1.17, 1.18, 1.20 and 1.21 that may be required to maintain pendency of the present application, or apply any credits to our PTO deposit account number: 501691.

Signature	/Charles Mirho/	Date	9/8/2012
Name (Print/Type)	Charles Mirho	Registration No. (Attorney/Agent)	41 199